

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.473 of 2007

O.B.Karthikeyan ... Appellant/complainant

-vs-

A.Rajeswari ... Respondent/accused

This appeal is filed under Section 378 CrI Rc against the Judgment made in C.C.No.287/2005 dated 21.2.2007 on the file of the Judicial Magistrate NO.3, Erode.

For appellant : Mr.I.C.Vasudevan
For respondent : Mr.S.Kaithamalai Kumaran

JUDGMENT

The order passed in C.C.No.287 of 2005 on the file of the Judicial Magistrate No.3, Erode dated 21.2.2007 is under challenge in this appeal.

2. A reading of the order of the learned trial Judge will go to show that in a private complaint preferred by the complainant for an offence under Section 138 of the Negotiable Instruments Act 1881, the complainant was examined in chief in the morning but was absent in the afternoon for cross examination and on behalf of the complainant to condone his absence, a petition under Section 256 of Cr.P.C has been filed but the same was dismissed on the ground that there is no sufficient reason assigned in the petition under Section 256 of Cr.P.C. to condone his absence . On the other hand, it is seen that the accused was also absent in the afternoon on the same day and a petition under Section 317 of Cr.P.C. was filed by the accused and the same was allowed by the learned trial judge, I am of the view that an opportunity must be given to the complainant to proceed with his private complainant.

3. The learned counsel appearing for the appellant represents that he will produce the complainant on 30.8.2007 before the trial Court.

4. In fine, the appeal is allowed on condition that the complainant appears before the trial Court on 30.8.2007 and on his appearance, the learned trial Judge shall restore C.C.No.287 of 2005 to her file and proceed with the case in accordance with law. Failure to comply with the condition of appearance of the complainant on 30.8.2007 before the trial Court, the appeal will deem to have been dismissed.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate NO.3, Erode (with records)

2. -do-through the Chief Judicial Magistrate, Erode

Copy to:

The Section Officer,

CrI Section, High Court

Madras (he is requested to send the records to day itself)

+one cc to Mr. A. Kumarasamy, Advocate sr no. 49714

+ one cc to Mr. I.C. Vasudevan, Advocate sr no. 49884

nsm(co)
nm(09.08.07)

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